

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of D. E. ROBINSON, Minor.

UNPUBLISHED

July 24, 2014

No. 319869

Wayne Circuit Court

Family Division

LC No. 01-396142-NA

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Before: MARKEY, P.J., and OWENS and FORT HOOD, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court's order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), (i), (j), and (l). We affirm.

Respondent first argues that the trial court clearly erred by finding that the statutory grounds for termination were established by clear and convincing evidence. In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). The trial court's decision is reviewed for clear error. *Id.* at 356-357. A decision is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

Termination of respondent's parental rights was based on MCL 712A.19b(3)(c)(i), (g), (j), (i), and (l), which permit termination of parental rights under the following circumstances:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

\* \* \*

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be

able to provide proper care and custody within a reasonable time considering the child's age.

\* \* \*

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

\* \* \*

(l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

In this case, respondent's parental rights were terminated to three other children in 2005, after her youngest child sustained serious injury in her care, and after she had been involved in a treatment plan for several years. Given these circumstances, the trial court did not clearly err in terminating respondent's parental rights pursuant to subsections (3)(i) and (3)(l).

Further, respondent's history with the Department of Human Services (DHS) dates back to 2001, and the record shows that she has a history of drug use, assaultive conduct, domestic violence, and mental health problems. The evidence established that respondent had not fully resolved her long-term substance abuse. Respondent completed a substance abuse treatment program in 2009 and completed substance abuse services while this case was pending, including a 30-day inpatient program and substance abuse therapy. Despite her participation in these services, respondent continued to use drugs and had a positive screen for cocaine shortly before the termination hearing. Although respondent acknowledged that she used drugs to cope with her problems, she denied having a substance abuse problem. Respondent also had a history of mental health problems with a prior diagnosis of major depression with psychotic features. Respondent's March 2012 psychological evaluation found that respondent functioned in the borderline range of intelligence and had impaired judgment and questionable decision making. The caseworker testified that respondent did not have the mental capacity to provide long-term care for the child. Respondent denied any problem in this area and she was not receiving any mental health treatment. Aside from these issues, the caseworker testified that respondent's home was unsuitable. The caseworker felt that respondent would not rectify these issues within a reasonable time and noted that respondent's problems were chronic and long term. Given this evidence, the trial court did not clearly err in terminating respondent's parental rights under subsections (3)(c)(i), (3)(g), and (3)(j).

Next, respondent contends that reversal is required because DHS failed to make reasonable reunification efforts. In support of this claim, respondent argues that DHS failed to reasonably accommodate her hearing impairment, thus violating the Americans with Disabilities Act (ADA), 42 USC 12010 *et seq.* Because respondent failed to raise this issue in a timely

manner, it is not properly preserved, and this Court's review is for plain error affecting her substantial rights. *In re HRC*, 286 Mich App 444, 450; 781 NW2d 105 (2009).

In *In re Terry*, 240 Mich App 14, 25; 610 NW2d 563 (2000), this Court held that disabled parents may not raise violations of the ADA as a defense to termination of parental rights proceedings because the proceedings do not constitute "services, programs or other activities" within the meaning of the ADA. However, this Court explained that the ADA requires the DHS "to make reasonable accommodations for those individuals with disabilities so that all persons may receive the benefits of public programs and services." *Id.* Accordingly, petitioner's reunification services and programs are required to comply with the ADA. This Court noted that "the state legislative requirement that the FIA [now DHS] make reasonable efforts to reunite a family is consistent with the ADA's directive that disabilities be reasonably accommodated." *Id.* at 26. "In other words, if the FIA fails to take into account the parents' limitations or disabilities and make any reasonable accommodations, then it cannot be found that reasonable efforts were made to reunite the family." *Id.*

After a thorough review of the record, we conclude that respondent has not established plain error that affected respondent's substantial rights. The record reveals that respondent had issues with her interpreters during these proceedings, but the trial court addressed her concerns by providing different interpreters to her. Moreover, the caseworker felt that respondent's complaints about her interpreter were unrelated to her failure to complete the substance abuse components of her treatment plan. Although the trial court did not immediately grant respondent's request for an interpreter at visitation, the trial court based that decision on the caseworker's representation that the child was not verbal and the caseworker was able to communicate with respondent via notes. The trial court did enter an order for an interpreter for visitations when respondent made a second request, and there is no indication that this delay in providing an interpreter for visits prejudiced respondent.

Respondent further argues that she did not receive services specifically geared for the hearing impaired. However, the caseworker was unaware of such services, respondent never requested them, and she had never indicated that she was not able to fully participate in her services. The caseworker also believed that specialized services would not have made any difference in how much of a benefit respondent obtained. Respondent had previously completed a substance abuse program geared for the deaf, yet she continued to use drugs. Respondent was provided an interpreter for her various services, was able to communicate with her child through an interpreter, and taught the child to sign. Given all these circumstances, we conclude that respondent has not established a plain error affecting her substantial rights.

Finally, respondent argues that termination of her parental rights was not in the child's best interests. Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights if the court also finds that termination of parental rights is in the best interests of the child. MCL 712A.19b(5). Whether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review the trial court's best-interests determination for clear error. *Id.* In deciding a child's best interests, the trial court may consider the child's bond to the parent, the parent's parenting

ability, the child's need for permanency, stability, and finality, and the suitability of alternative homes. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012).

Respondent asserts that the trial court relied on inappropriate considerations in terminating her parental rights. She points out that the trial court questioned her about, and made comments concerning, her decision to have multiple children out of wedlock by multiple fathers, and the trial court verified that the child's foster home had two parents. However, the court's questioning and comments could reasonably be related to the issues of whether respondent would provide stability for her child and the suitability of alternative homes. The court was entitled to consider respondent's past history in deciding the child's best interests. See *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009) (finding no error where the trial court considered the respondent's past history in assessing the child's best interests). Respondent has not established any error the trial court made in its questions and comments.

Although respondent testified that she loved her child, and she regularly visited the child during these proceedings, the child was removed from respondent's care two days after birth. Respondent's visits never progressed to unsupervised because respondent was never fully compliant with her treatment plan. Given this situation, any bond was likely limited. The child would sometimes scream and cry for the foster mother during the visits and would have tantrums. The record shows that the child was doing very well in her foster home of three years. She was bonded to her foster mother and could find permanency there, as the family was willing to adopt her. Despite the length of time this matter was pending, respondent had not resolved her long-term substance abuse or addressed her mental health concerns, and her home was still unsuitable. Given these circumstances, the trial court did not clearly err by concluding that termination was in the child's best interests.

Affirmed.

/s/ Jane E. Markey

/s/ Donald S. Owens

/s/ Karen M. Fort Hood